

MONTANA LEGISLATIVE HISTORY

Chapter 354 19 95

Bill H _____ S 293 Original bill & history ___C

H. Committee on Human Services
Public Health

Hearing Date(s) 3-10 ✓C

3-22 ✓C

_____C

_____C

Date Out _____C

S. Committee on Public Health

Hearing Date(s) 2-17 ✓C

_____C

_____C

_____C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____

Report _____

TRANSMITTED TO HOUSE
 2/14 FIRST READING
 2/15 REFERRED TO EDUCATION & CULTURAL RESOURCES
 3/03 HEARING
 3/23 TABLED IN COMMITTEE
 DIED IN COMMITTEE

SB 292 INTRODUCED BY BROWN, ET AL.
 CREATE THE "WOMAN'S RIGHT-TO-KNOW ACT" CONCERNING ABORTION

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO JUDICIARY		
2/03	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/10	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	31	19
2/16	3RD READING PASSED	31	19
TRANSMITTED TO HOUSE			
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/20	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED AS AMENDED	56	42
3/30	3RD READING CONCURRED	54	42
RETURNED TO SENATE WITH AMENDMENTS			
4/06	2ND READING AMENDMENTS NOT CONCURRED	48	2
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	37	13
HOUSE			
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/11	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	88	10
4/12	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	57	40
4/13	SIGNED BY PRESIDENT		
4/13	SIGNED BY SPEAKER		
4/17	TRANSMITTED TO GOVERNOR		
4/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 566		
	EFFECTIVE DATE, 07/01/95		

SB 293 INTRODUCED BY HARDING, ET AL.
 GENERALLY REVISE LAWS RELATED TO MEDICAID FRAUD AND ABUSE,
 RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF
 SANCTIONS FOR MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF
 HEALTH CARE FACILITIES TO COMPLY WITH APPLICABLE STANDARDS
 AND REQUIREMENTS
 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
 SERVICES

2/02 INTRODUCED
 2/02 FIRST READING

2/02	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/03	FISCAL NOTE REQUESTED		
2/10	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/17	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/21	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO HUMAN SERVICES & AGING		
3/10	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	99	0
3/27	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	50	0
3/31	3RD READING AMENDMENTS CONCURRED	49	0
4/04	SIGNED BY PRESIDENT		
4/05	SIGNED BY SPEAKER		
4/06	TRANSMITTED TO GOVERNOR		
4/11	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 354		
	EFFECTIVE DATE: 04/11/95—SECTIONS 1, 6-19		
	EFFECTIVE DATE: 07/01/95—SECTIONS 2-5		

SB 294 INTRODUCED BY MOHL, ET AL.
 DEFINE A FERTILIZER SPREADER TRUCK OR TAILER AS SPECIAL MOBILE
 EQUIPMENT FOR CERTAIN PURPOSES

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/03	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/14	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED		
2/15	2ND READING PASSED	50	0
2/16	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/10	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	92	7
3/25	3RD READING CONCURRED	85	11
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 314		
	EFFECTIVE DATE: 01/01/96		

SB 295 INTRODUCED BY JACOBSON, ET AL.
 ESTABLISH CRITERIA FOR THE ISSUANCE OF SPECIAL PARKING PERMITS

2/02	INTRODUCED
2/02	FIRST READING

SENATE PUBLIC HEALTH, WELFARE & SAFETY

Page 5

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0236	WATERMAN, MIGNON	MEDICAID ESTATE RECOVERIES	1/25	2/13	PASS AS AMENDED	2/15	VOTE:	2/15
SB0240	VAN VALKENBURG, FRED	RESTRICTED LICENSE FOR FOREIGN-TRAINED PHYSICIAN UNDER CERTAIN CONDITIONS	1/25	2/15	DO PASS	2/15	VOTE:	2/15
SB0244	WATERMAN, MIGNON	REQUIRE PERMANENT PLACEMENT PLAN FOR CHILDREN & REVIEW OF ADOPTION LAW	1/25	2/06	PASS AS AMENDED	2/8	VOTE:	2/08
SB0248	CRISMORE, WILLIAM	CESSPOOL, SEPTIC TANK, PRIVY CLEANING -- LOCAL REGULATION	1/26	2/13	TABLED ON	02/15	VOTE:	
SB0270	BURNETT, JIM	RECORD DESTRUCTION IF CHILD DETERMINED NOT TO BE ABUSED OR NEGLECTED	1/30	2/08	PASS AS AMENDED	2/8	VOTE:	2/08
SB0271	BURNETT, JIM	CLARIFY POLICY REGARDING CHILD PLACEMENT	1/30	2/08	PASS AS AMENDED	2/8	VOTE:	2/08
SB0293	HARDING, ETHEL	ESTABLISH MEDICAID FRAUD AND ABUSE UNIT AND LAWS	2/02	2/17	PASS AS AMENDED	2/17	VOTE:	2/18
SB0307	HARDING, ETHEL	REVISE ACUPUNCTURE LAW	2/04	2/17	PASS AS AMENDED	2/17	VOTE:	2/18
SB0310	JACOBSON, JUDY	REVISE PHYSICIAN ASSISTANT LAW ON PRESCRIPTIONS AND VOTING	2/04	2/15	PASS AS AMENDED	2/15	VOTE:	2/15
SB0320	FRANKLIN, EVE	REVISE NURSE PRACTICE ACT	2/07				VOTE:	BUSINESS & LABOR
SB0327	KLAMPE, TERRY	REVISE CHIROPRACTIC LICENSURE	2/08				VOTE:	BUSINESS & LABOR
SB0339	CHRISTIAENS, CHRIS	REVISE HEALTH INSURANCE COVERAGE FOR MENTAL HEALTH, CHEMICAL DEPENDENCY	2/09	2/13	PASS AS AMENDED	2/15	VOTE:	2/15

Fisher
SENATE BILL NO. 293

INTRODUCED BY

HARP

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

GRINOS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO MEDICAID FRAUD AND ABUSE, RECOVERY OF MEDICAID OVERPAYMENTS, AND IMPOSITION OF SANCTIONS FOR MEDICAID FRAUD AND ABUSE AND FOR FAILURE OF HEALTH CARE FACILITIES TO COMPLY WITH APPLICABLE STANDARDS AND REQUIREMENTS; ESTABLISHING A MEDICAID FRAUD CONTROL UNIT IN THE DEPARTMENT OF JUSTICE; SPECIFYING THE POWERS AND DUTIES OF THE UNIT; ESTABLISHING CRIMINAL OFFENSES RELATED TO MEDICAID FRAUD; SPECIFYING CERTAIN DUTIES OF MEDICAID APPLICANTS, RECIPIENTS, AND PROVIDERS WITH RESPECT TO THE TRUTH, COMPLETENESS, AND ACCURACY OF DOCUMENTS AND INFORMATION SUBMITTED FOR MEDICAID PURPOSES; SPECIFYING THE SANCTIONS THAT MAY BE APPLIED TO PROVIDERS AND OTHER PERSONS WHO ENGAGE IN MEDICAID FRAUD AND ABUSE AND TO HEALTH CARE FACILITIES THAT FAIL TO COMPLY WITH APPLICABLE STANDARDS AND REQUIREMENTS; AMENDING SECTIONS 45-2-101, 45-2-103, 45-2-104, 50-20-109, 53-6-106, 53-6-107, 53-6-108, 53-6-111, AND 61-5-405, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Abuse" means conduct by an applicant, recipient, provider, or other person involving disregard of and an unreasonable failure to conform with the statutes, regulations, and rules governing the medical assistance program when the disregard or failure results or may result in an incorrect determination that a person is eligible for medical assistance or payment by a medicaid agency of medical assistance payments to which the provider is not entitled.

(2) "Applicant" means a person:

(a) who has submitted an application for determination of medicaid eligibility to a medicaid agency on the person's own behalf or on behalf of another person; or

1 (b) on whose behalf an application has been submitted.

2 (3) "Benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under
3 the medicaid program.

4 (4) "Claim" means a communication, whether in oral, written, electronic, magnetic, or other form,
5 that is used to claim specific services or items as payable or reimbursable under the medicaid program or
6 that states income, expense, or other information that is or may be used to determine entitlement to or the
7 rate of payment under the medicaid program. The term includes any documents submitted as part of or
8 in support of the claim.

9 (5) "Department" means the department of social and rehabilitation services provided for in
10 2-15-2201.

11 (6) "Document" means any application, claim, form, report, record, writing, or correspondence,
12 whether in written, electronic, magnetic, or other form.

13 (7) "Fraud" means any conduct or activity prohibited by statute, regulation, or rule involving
14 purposeful or knowing conduct or omission to perform a duty that results in or may result in medicaid
15 payments or benefits to which the applicant, recipient, or provider is not entitled. Fraud includes but is not
16 limited to any conduct or omission under the medicaid program that would constitute a criminal offense
17 under Title 45, chapter 6 or 7.

18 (8) "Medicaid" means the Montana medical assistance program established under Title 53, chapter
19 6.

20 (9) "Medicaid agency" means any agency or entity of state, county, or local government that
21 administers any part of the medicaid program, whether under direct statutory authority or under contract
22 with an authorized agency of the state or federal government. The term includes but is not limited to the
23 department, the department of health and environmental sciences, the department of corrections and
24 human services, county offices of human services and public welfare, and other local and state agencies
25 and their agents, contractors, and employees, when acting with respect to medicaid eligibility, claims
26 processing or payment, utilization review, case management, provider certification, investigation, or other
27 administration of the medicaid program.

28 (10) "Misappropriation of patient property" means exploitation, deliberate misplacement, or
29 wrongful use or taking of a patient's property, whether temporary or permanent, without authorization by
30 the patient or the patient's designated representative. Misappropriation of patient property includes but

is not limited to any conduct with respect to a patient's property that would constitute a criminal offense under Title 45, chapter 6, part 3.

(11) "Patient abuse" means the willful infliction of physical or mental injury of a patient or unreasonable confinement, intimidation, or punishment that results in pain, physical or mental harm, or mental anguish of a patient. Patient abuse includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under Title 45, chapter 5.

(12) "Patient neglect" means a failure, through inattentiveness, carelessness, or other omission, to provide to a patient goods and services necessary to avoid physical harm, mental anguish, or mental illness when an omission is not caused by factors beyond the person's control or by good faith errors in judgment. Patient neglect includes but is not limited to any conduct with respect to a patient that would constitute a criminal offense under 45-5-208.

(13) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the medical assistance program established under this part.

(14) "Recipient" means a person:

(a) who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the person actually has received any benefits; or

(b) who actually receives medicaid benefits, whether or not determined eligible.

(15) (a) "Records" means medical, professional, business, or financial information and documents, whether in written, electronic, magnetic, microfilm, or other form:

(i) pertaining to the provision of treatment, care, services, or items to a recipient;

(ii) pertaining to the income and expenses of the provider; or

(iii) otherwise relating to or pertaining to a determination of eligibility for or entitlement to payment or reimbursement under the medicaid program.

(b) The term includes all records and documents, regardless of whether the records are required by medicaid laws, regulations, rules, or policies to be made and maintained by the provider.

NEW SECTION. Section 2. Medicaid fraud control unit. (1) There is a medicaid fraud control unit in the department of justice. The unit is under the supervision and control of the attorney general and, subject to the availability of appropriated funds, consists of the agents and employees of the department

1 of justice whom the attorney general considers necessary and appropriate, including but not limited to:

2 (a) persons qualified by education, training, experience, and high professional competence in
3 criminal and civil investigative procedures;

4 (b) at least one person licensed to practice law in Montana and qualified by education, training,
5 experience, and high professional competence to prosecute crimes; and

6 (c) auditors and other additional professional and support staff.

7 (2) The medicaid fraud control unit is a criminal justice agency within the meaning of 44-5-103.
8 Agents designated by the attorney general have peace officer status and authority, including but not limited
9 to search, seizure, and arrest.

10
11 **NEW SECTION. Section 3. Powers and duties of medicaid fraud control unit.** (1) The medicaid
12 fraud control unit shall:

13 (a) investigate and prosecute under applicable criminal statutes fraud and abuse by applicants,
14 recipients, providers, or other persons under the medical assistance program established under this chapter,
15 including but not limited to cases referred by the department;

16 (b) review any complaint of patient abuse, patient neglect, and misappropriation of patient property
17 by providers or their employees or agents and, when appropriate, shall investigate and initiate criminal
18 proceedings or refer the complaint to another state agency for action;

19 (c) refer to the department for collection and, when appropriate, consideration and imposition of
20 appropriate recipient restrictions or provider sanctions cases involving recipient or provider overpayments,
21 fraud, abuse, inappropriate use of services, or other improper activities discovered by the unit in carrying
22 out its activities;

23 (d) communicate and cooperate with and, subject to applicable confidentiality laws, provide
24 information to other state and federal agencies involved in the investigation and prosecution of health care
25 fraud, abuse, and other improper activities related to the medicaid program;

26 (e) transmit to other state and federal agencies, in accordance with law reports of convictions,
27 copies of judgments and sentences imposed and other information and documents for purposes of program
28 exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or
29 assistance programs; and

30 (f) recommend to state agencies appropriate or necessary adoption or revision of statutes.

1 regulations, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the
2 medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper
3 activities under the medicaid program.

4 (2) The medicaid fraud control unit may:

5 (a) initiate criminal prosecutions related to the medicaid program in any court of competent
6 jurisdiction in the state of Montana;

7 (b) upon written request, obtain information and records from applicants, recipients, and providers;

8 (c) exercise the authority granted to prosecutors with respect to criminal investigative subpoenas
9 under Title 46, chapter 4, part 3;

10 (d) subject to applicable federal confidentiality laws and regulations and for purposes related to any
11 investigation or prosecution related to the medicaid program, obtain from the department, county welfare
12 and human services offices, and other local, county, or state government departments or agencies records
13 and other information, including but not limited to applicant and recipient applications, provider enrollment
14 forms, claims and reports, individual or entity tax returns, or other information provided to or in the
15 possession of the department of revenue or the state auditor;

16 (e) refer appropriate cases to other state or federal agencies for investigation, prosecution, or
17 imposition of penalties, restrictions, or sanctions;

18 (f) enter into agreements with the department and other state and federal agencies in furtherance
19 of the unit's mission; and

20 (g) do all things necessary to comply with 42 U.S.C. 1396a(a)(61) and 42 U.S.C. 1396b(q) and
21 any implementing federal regulations and policies that require the state to operate a medicaid fraud control
22 unit.

23
24 **NEW SECTION. Section 4. Cooperation of governmental agencies with medicaid fraud control unit.**

25 All local, county, and state departments and agencies shall cooperate with the medicaid fraud control unit
26 and its agents and employees to effectuate the purposes of the unit.

27
28 **NEW SECTION. Section 5. Permitted disclosure of information obtained in medicaid fraud control**
29 **unit investigations.** Records, documents, and other information obtained in the course of an investigation
30 by the medicaid fraud control unit or its agents, employees, or attorneys may be disclosed:

1 (1) in accordance with the Montana Criminal Justice Information Act of 1979, as provided in Title
2 44, chapter 5; and

3 (2) to a medicaid agency for purposes related to administration of the medicaid program.
4

5 **NEW SECTION. Section 6. Truthfulness, completeness, and accuracy of submissions to medicaid**

6 **agencies.** (1) A person who submits to a medicaid agency an application, claim, report, document, or other
7 information that is or may be used to determine eligibility for medicaid benefits, eligibility to participate as
8 a provider, or the right to or the amount of payment under the medicaid program is considered to represent
9 to the department, to the best of the person's knowledge and belief, that the item is genuine and that its
10 contents, including all statements, claims, and representations contained in the document, are true,
11 complete, accurate, and not misleading.

12 (2) (a) A provider has a duty to exercise reasonable care to ensure the truthfulness, completeness,
13 and accuracy of all applications, claims, reports, documents, and other information and of all statements
14 and representations made or submitted, or authorized by the provider to be made or submitted, to the
15 department for purposes related to the medicaid program. The duty applies whether the applications,
16 claims, reports, documents, other information, statements, or representations were made or submitted, or
17 authorized by the provider to be made or submitted, on behalf of the provider or on behalf of an applicant
18 or recipient being served by the provider.

19 (b) A provider has a duty to exercise reasonable care to ensure that a claim made or submitted to
20 the department or its agents or employees for payment or reimbursement under the medicaid program is
21 one for which the provider is entitled to receive payment and that the service or item is provided and billed
22 according to all applicable medicaid requirements, including but not limited to identification of the
23 appropriate procedure code or level of service and provision of the service by a person, facility, or other
24 provider entitled to receive medicaid payment for the particular service.

25 (3) A person is considered to have known that a claim, statement, or representation related to the
26 medicaid program was false, incomplete, inaccurate, or misleading if the person knew, or by virtue of the
27 person's position, authority, or responsibility should have known, of the falsity, incompleteness, inaccuracy,
28 or misleading nature of the claim, statement, or representation.

29 (4) A person is considered to have made or to have authorized to be made a claim, statement, or
30 representation if the person:

1 (a) had the authority or responsibility to:

2 (i) make the claim, statement, or representation;

3 (ii) supervise another who made the claim, statement, or representation; or

4 (iii) authorize the making of the claim, statement, or representation, whether by operation of law,
5 business or professional practice, or office policy or procedure; and

6 (b) exercised or failed to exercise that authority or responsibility and, as a direct or indirect result,
7 the false, incomplete, inaccurate, or misleading statement was made.

8 (5) (a) There is an inference that a person who signs or submits a document to a medicaid agency
9 on behalf of or in the name of a provider is authorized by the provider to do so and is acting under the
10 provider's direction.

11 (b) For purposes of this section, the term "signs" includes but is not limited to the use of facsimile,
12 computer-generated and typed, or block-letter signatures.

13
14 **NEW SECTION. Section 7. Medicaid fraud.** (1) A person commits the offense of medicaid fraud
15 when:

16 (a) the person obtains a medicaid payment or benefit for the person or another person by purposely
17 or knowingly:

18 (i) making, submitting, or authorizing the making or submitting of a false, incomplete, inaccurate,
19 or misleading medicaid claim, statement, representation, application, or document to a medicaid agency;
20 or

21 (ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement,
22 representation, application, or document under the medicaid program for a service or item when the person
23 knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules,
24 or policies to medicaid payment or benefit for the service or item or for the amount of payment requested
25 or claimed;

26 (b) the person purposely or knowingly:

27 (i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback,
28 bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing
29 services or items for which payment may be made under the medicaid program or in return for purchasing,
30 leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or

1 items from a provider for which payment may be made under the medicaid program; or

2 (ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient
3 to another provider for the furnishing of services or items for which payment may be made under the
4 medicaid program; or

5 (c) the person, with respect to a managed care contract, health maintenance organization contract,
6 or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to
7 provide covered medically necessary services to eligible recipients as required by the contract.

8 (2) Any conduct or activity that does not violate or that is protected under the provisions of, or
9 federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is
10 considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same
11 protections allowed under federal laws and regulations.

12 (3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance
13 upon the written authorization of the department.

14 (4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
15 not exceeding \$500 in value shall be fined an amount not to exceed \$500 or be imprisoned in the county
16 jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined
17 \$500 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A
18 person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county
19 jail for a term not less than 30 days or more than 1 year.

20 (b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims
21 exceeding \$500 in value shall be fined an amount not to exceed the greater of \$50,000 or 10 times the
22 value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or
23 both.

24 (c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of
25 payments or benefits involved is the greater of the value of medicaid payments or benefits received as a
26 result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

27 (d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same
28 transaction may be aggregated in determining the value involved.

29 (e) A person convicted of the offense of medicaid fraud must be suspended from participation in
30 the medicaid program:

1 (i) for any period of time not less than 1 year for a first offense, or the person may be permanently
2 terminated from participation in the medical assistance program;

3 (ii) for any period of time not less than 3 years for a second offense, or the person may be
4 permanently terminated from participation in the medical assistance program; or

5 (iii) permanently for a third offense.

6 (5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not
7 entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the
8 services or items involved and shall repay to the medicaid program any payments or benefits obtained by
9 any person for the services or items involved.

10 (6) The establishment of the criminal offenses specified in this section does not preclude the
11 application of any other provision of law.

12
13 **Section 8.** Section 45-2-101, MCA, is amended to read:

14 **"45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken
15 in the objective standard rather than in the subjective, and unless a different meaning plainly is required,
16 the following definitions apply in this title:

17 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
18 communication, and when relevant, a failure or omission to take action.

19 (2) "Administrative proceeding" means any proceeding the outcome of which is required to be
20 based on a record or documentation prescribed by law or in which a law or a regulation is particularized
21 in its application to an individual.

22 (3) "Another" means a person or persons, as defined in this code, other than the offender.

23 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
24 advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
25 Benefit does not include an advantage promised generally to a group or class of voters as a consequence
26 of public measures that a candidate engages to support or oppose.

27 (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and
28 includes mental illness or impairment.

29 (6) "Cohabit" means to live together under the representation of being married.

30 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish

1 a single criminal objective or by a common purpose or plan that results in the repeated commission of the
2 same offense or that affects the same person or the same persons or the property of the same person or
3 persons.

4 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions
5 by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage,
6 software, or communication facilities that are connected or related to that device in a system or network.

7 (9) "Computer network" means the interconnection of communication systems between computers
8 or computers and remote terminals.

9 (10) "Computer program" means an instruction or statement or a series of instructions or
10 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of
11 a computer or computer system and causes it to perform specified functions.

12 (11) "Computer services" include but are not limited to computer time, data processing, and
13 storage functions.

14 (12) "Computer software" means a set of computer programs, procedures, and associated
15 documentation concerned with the operation of a computer system.

16 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
17 software, or other related computer equipment.

18 (14) "Conduct" means an act or series of acts and the accompanying mental state.

19 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
20 upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of
21 competent jurisdiction authorized to try the case without a jury.

22 (16) "Correctional institution" means the state prison, county or city jail, or other institution for the
23 incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

24 (17) "Deception" means knowingly to:

25 (a) create or confirm in another an impression that is false and that the offender does not believe
26 to be true;

27 (b) fail to correct a false impression that the offender previously has created or confirmed;

28 (c) prevent another from acquiring information pertinent to the disposition of the property involved;

29 (d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other
30 legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is

1 not a matter of official record; or

2 (e) promise performance that the offender does not intend to perform or knows will not be
3 performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

4 (18) "Defamatory matter" means anything that exposes a person or a group, class, or association
5 to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business
6 or occupation.

7 (19) "Deprive" means to withhold property of another:

8 (a) permanently;

9 (b) for such a period as to appropriate a portion of its value;

10 (c) with the purpose to restore it only upon payment of reward or other compensation; or

11 (d) to dispose of the property and use or deal with the property so as to make it unlikely that the
12 owner will recover it.

13 (20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons
14 of the same sex or any form of sexual intercourse with an animal.

15 (21) "Document" means, with respect to offenses involving the medicaid program, any application,
16 claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm,
17 or other form.

18 (22) "Felony" means an offense in which the sentence imposed upon conviction is death or
19 imprisonment in the state prison for any term exceeding 1 year.

20 ~~(22)~~(23) "Forcible felony" means any felony that involves the use or threat of physical force or
21 violence against any individual.

22 ~~(23)~~(24) A "frisk" is a search by an external patting of a person's clothing.

23 ~~(24)~~(25) "Government" includes any branch, subdivision, or agency of the government of the state
24 or any locality within it.

25 ~~(25)~~(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person
26 affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected
27 person is interested.

28 ~~(26)~~(27) A "house of prostitution" means any place where prostitution or promotion of prostitution
29 is regularly carried on by one or more persons under the control, management, or supervision of another.

30 ~~(27)~~(28) "Human being" means a person who has been born and is alive.

~~(28)~~(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

~~(29)~~(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

~~(30)~~(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

~~(31)~~(32) An "involuntary act" means any act that is:

- (a) a reflex or convulsion;
- (b) a bodily movement during unconsciousness or sleep;
- (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

~~(32)~~(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

~~(33)~~(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

~~(34)~~(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

~~(36)~~ "Medicaid agency" has the meaning in [section 1].

~~(37)~~ "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a

1 recipient under the medicaid program.

2 (38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic,
3 or other form:

4 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
5 program; or

6 (ii) that states income, expense, or other information that is or may be used to determine
7 entitlement to or the rate of payment under the medicaid program.

8 (b) The term includes any related documents submitted as a part of or in support of the claim.

9 (39) "Mentally defective" means that a person suffers from a mental disease or defect that renders
10 the person incapable of appreciating the nature of the person's own conduct.

11 (35)(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of
12 appreciating or controlling the person's own conduct as a result of the influence of an intoxicating
13 substance.

14 (36)(41) "Misdemeanor" means an offense in which the sentence imposed upon conviction is
15 imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is
16 imprisonment in the state prison for any term of 1 year or less.

17 (37)(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance
18 described by a statute defining an offense when the person consciously disregards a risk that the result will
19 occur or that the circumstance exists or when the person disregards a risk of which the person should be
20 aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree
21 that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would
22 observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack
23 of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

24 (38)(43) "Obtain" means:

25 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
26 offender or to another; and

27 (b) in relation to labor or services, to secure the performance of the labor or service.

28 (39)(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away,
29 or the sale, conveyance, or transfer of title to, interest in, or possession of property.

30 (40)(45) "Occupied structure" means any building, vehicle, or other place suitable for human

1 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
2 present. Each unit of a building consisting of two or more units separately secured or occupied is a separate
3 occupied structure.

4 ~~(41)~~(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted,
5 or punished for a public offense.

6 ~~(42)~~(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
7 authorized. Offenses are classified as felonies or misdemeanors.

8 ~~(43)~~(48) "Official detention" means imprisonment resulting from a conviction for an offense,
9 confinement for an offense, confinement of a person charged with an offense, detention by a peace officer
10 pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the
11 protection of the welfare of the person detained or for the protection of society. Official detention does not
12 include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest
13 unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

14 ~~(44)~~(49) "Official proceeding" means a proceeding heard or that may be heard before any
15 legislative, judicial, administrative, or other governmental agency or official authorized to take evidence
16 under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony
17 or deposition in connection with the proceeding.

18 ~~(45)~~(50) "Other state" means any state or territory of the United States, the District of Columbia,
19 and the Commonwealth of Puerto Rico.

20 ~~(46)~~(51) "Owner" means a person other than the offender who has possession of or any other
21 interest in the property involved, even though the interest or possession is unlawful, and without whose
22 consent the offender has no authority to exert control over the property.

23 ~~(47)~~(52) "Party official" means a person who holds an elective or appointive post in a political party
24 in the United States by virtue of which the person directs or conducts or participates in directing or
25 conducting party affairs at any level of responsibility.

26 ~~(48)~~(53) "Peace officer" means any person who by virtue of the person's office or public
27 employment is vested by law with a duty to maintain public order or to make arrests for offenses while
28 acting within the scope of the person's authority.

29 ~~(49)~~(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or
30 anything else the primary significance of which is economic gain.

1 ~~(50)~~(55) "Person" includes an individual, business association, partnership, corporation,
2 government, or other legal entity and an individual acting or purporting to act for or on behalf of any
3 government or subdivision of government.

4 ~~(51)~~(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
5 to communicate unwillingness to act.

6 ~~(52)~~(57) "Possession" is the knowing control of anything for a sufficient time to be able to
7 terminate control.

8 ~~(53)~~(58) "Premises" includes any type of structure or building and any real property.

9 ~~(54)~~(59) "Property" means any tangible or intangible thing of value. Property includes but is not
10 limited to:

11 (a) real estate;

12 (b) money;

13 (c) commercial instruments;

14 (d) admission or transportation tickets;

15 (e) written instruments that represent or embody rights concerning anything of value, including
16 labor or services, or that are otherwise of value to the owner;

17 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
18 building;

19 (g) electricity, gas, and water;

20 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

21 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
22 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
23 thereof;

24 (j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions,
25 photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret
26 scientific, technical, merchandising, production, or management information or a secret designed process,
27 procedure, formula, invention, or improvement; and

28 (k) electronic impulses, electronically processed or produced data or information, commercial
29 instruments, computer software or computer programs, in either machine- or human-readable form,
30 computer services, any other tangible or intangible item of value relating to a computer, computer system,

1 or computer network, and any copies thereof.

2 ~~(55)~~(60) "Property of another" means real or personal property in which a person other than the
3 offender has an interest that the offender has no authority to defeat or impair, even though the offender
4 may have an interest in the property.

5 ~~(56)~~(61) "Public place" means any place to which the public or any substantial group has access.

6 ~~(57)~~(62) "Public servant" means any officer or employee of government, including but not limited
7 to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
8 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
9 term "public servant" includes one who has been elected or designated to become a public servant.

10 ~~(58)~~(63) "Purposely"--a person acts purposely with respect to a result or to conduct described by
11 a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause
12 that result. When a particular purpose is an element of an offense, the element is established although the
13 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
14 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

15 ~~(59)~~(64) (a) "Serious bodily injury" means bodily injury that:

16 (i) creates a substantial risk of death;

17 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
18 process of any bodily member or organ; or

19 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
20 or protracted loss or impairment of the function or process of any bodily member or organ.

21 (b) The term includes serious mental illness or impairment.

22 ~~(60)~~(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person
23 of another for the purpose of arousing or gratifying the sexual desire of either party.

24 ~~(61)~~(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by
25 the penis of another person, penetration of the vulva or anus of one person by any body member of another
26 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated
27 by another person for the purpose of arousing or gratifying the sexual desire of either party. Any
28 penetration, however slight, is sufficient.

29 ~~(62)~~(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise
30 another to commit an offense.

~~(63)~~(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

~~(64)~~(69) "Statute" means any act of the legislature of this state.

~~(65)~~(70) "Stolen property" means property over which control has been obtained by theft.

~~(66)~~(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

~~(67)~~(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

~~(68)~~(73) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(69)~~(74) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of

1 the indebtedness less any portion of the indebtedness that has been satisfied.

2 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
3 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
4 the instrument might reasonably suffer by virtue of the loss of the instrument.

5 (iii) The value of electronic impulses, electronically produced data or information, computer
6 software or programs, or any other tangible or intangible item relating to a computer, computer system,
7 or computer network is considered to be the amount of economic loss that the owner of the item might
8 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
9 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
10 of the item.

11 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
12 standards set forth in subsection ~~(69)(a)~~ (74)(a), its value is considered to be an amount less than \$500.

13 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
14 whether from the same person or several persons, may be aggregated in determining the value of the
15 property.

16 ~~(70)(75)~~ "Vehicle" means any device for transportation by land, water, or air or by mobile
17 equipment, with provision for transport of an operator.

18 ~~(71)(76)~~ "Weapon" means any instrument, article, or substance that, regardless of its primary
19 function, is readily capable of being used to produce death or serious bodily injury.

20 ~~(72)(77)~~ "Witness" means a person whose testimony is desired in any official proceeding, in any
21 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

22
23 **Section 9.** Section 45-2-103, MCA, is amended to read:

24 **"45-2-103. General requirements of criminal act and mental state.** (1) Except for deliberate
25 homicide as defined in 45-5-102(1)(b) or an offense ~~which~~ that involves absolute liability, a person is not
26 guilty of an offense unless, with respect to each element described by the statute defining the offense, ~~he~~
27 a person acts while having one of the mental states ~~described~~ of knowingly, negligently, or purposely ~~in~~
28 ~~subsections (33), (37), and (58) of 45-2-101.~~

29 (2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental
30 state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

1 (3) The existence of a mental state may be inferred from the acts of the accused and the facts and
2 circumstances connected with the offense.

3 (4) If the statute defining an offense prescribes a particular mental state with respect to the offense
4 as a whole without distinguishing among the elements ~~thereof~~ of the offense, the prescribed mental state
5 applies to each ~~such~~ element.

6 (5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning,
7 or application of the statute defining an offense is not an element of the offense unless the statute clearly
8 defines it as ~~such~~ an element.

9 (6) A person's reasonable belief that ~~his~~ the person's conduct does not constitute an offense is
10 a defense if:

11 (a) the offense is defined by an administrative regulation or order ~~which that~~ is not known to ~~him~~
12 the person and has not been published or otherwise made reasonably available to ~~him~~ the person and ~~he~~
13 if the person could not have acquired ~~such the~~ knowledge by the exercise of due diligence pursuant to facts
14 known to ~~him~~ the person;

15 (b) ~~he~~ the person acts in reliance upon a statute ~~which that~~ later is determined to be invalid;

16 (c) ~~he~~ the person acts in reliance upon an order or opinion of the Montana supreme court or a
17 United States appellate court later overruled or reversed; or

18 (d) ~~he~~ the person acts in reliance upon an official interpretation of the statute, regulation, or order
19 defining the offense made by a public officer or agency legally authorized to interpret ~~such the~~ the statute.

20 (7) If a person's reasonable belief is a defense under subsection (6), nevertheless ~~he~~ the person
21 may be convicted of an included offense of which ~~he~~ the person would be guilty if the law were as ~~he~~ the
22 person believed it to be.

23 (8) ~~Any~~ A defense based upon this section is an affirmative defense."
24

25 **Section 10.** Section 45-2-104, MCA, is amended to read:

26 **"45-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each
27 element ~~thereof of the offense~~, one of the mental states ~~described in subsections (33), (37), and (58)~~ of
28 knowingly, negligently, or purposely ~~45-2-101~~ only if the offense is punishable by a fine not exceeding
29 \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability
30 for the conduct described."

1 **Section 11.** Section 50-20-109, MCA, is amended to read:

2 **"50-20-109. Control of practice of abortion.** (1) ~~No~~ An abortion may not be performed within the
3 state of Montana:

4 (a) except by a licensed physician;

5 (b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

6 (c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to
7 preserve the life or health of the mother.

8 (2) An abortion under subsection (1)(c) may only be performed if:

9 (a) the foregoing judgment of the physician who is to perform the abortion is first certified in
10 writing by ~~him~~ the physician, setting forth in detail the facts upon which ~~he~~ the physician relies in making
11 ~~such~~ the judgment; and

12 (b) two other licensed physicians have first examined the patient and concurred in writing with
13 ~~such~~ the judgment. The foregoing certification and concurrence ~~is~~ are not required if a licensed physician
14 certifies that the abortion is necessary to preserve the life of the mother.

15 (3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section
16 must be such that the viability of the fetus is not intentionally or negligently endangered, as the term
17 "negligently" is defined in 45-2-101~~(37)~~. The fetus may be intentionally endangered or destroyed only if
18 necessary to preserve the life or health of the mother.

19 (4) ~~No~~ A physician, facility, or other person or agency ~~shall~~ may not engage in solicitation,
20 advertising, or other form of communication ~~having that has~~ the purpose of inviting, inducing, or attracting
21 ~~any a~~ person to come to ~~such~~ the physician, facility, or other person or agency to have an abortion or to
22 purchase abortifacients.

23 (5) Violation of subsections (1), (2), and (3) ~~of this section~~ is a felony. Violation of subsection (4)
24 ~~of this section~~ is a misdemeanor."

25

26 **Section 12.** Section 53-6-106, MCA, is amended to read:

27 **"53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through
28 53-6-108, the following definitions apply:

29 (a) "Department" means the department of social and rehabilitation services.

30 (b) "Health care facility" means a health care facility as defined in 50-5-101.

1 (2) The department and the department of health and environmental sciences may enter into
2 agreements with appropriate federal agencies for the purpose of certifying health care facilities for the
3 Montana medicaid program.

4 (3) The department of health and environmental sciences ~~shall~~ may adopt rules ~~prescribing as~~
5 ~~necessary to prescribe~~ minimum standards for the maintenance and operation of health care facilities,
6 ~~including standards.~~ Standards for the quality of care provided by those facilities receiving reimbursement
7 under the Montana medicaid program. ~~These standards must include, as a minimum, be consistent with~~
8 those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, (42
9 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in Title 42 CFR
10 430, et seq. of the Code of Federal Regulations, as may be amended. The authority to prescribe standards
11 and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department
12 of health and environmental sciences pursuant to Title 50, chapter 5.

13 (4) Standards adopted by the department of health and environmental sciences may include but
14 are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and
15 nutrition, environmental and sanitation, administration, admission policies, patient care planning, training,
16 medication, health services, rehabilitation services, and social services and activities."

17
18 **Section 13.** Section 53-6-107, MCA, is amended to read:

19 **"53-6-107. Sanctions -- penalties.** (1) The department may suspend, terminate, or refuse to renew
20 an agreement with a health care facility that has failed to meet the requirements for certification ~~adopted~~
21 ~~for or participation in the Montana medicaid program under 53-6-106 through 53-6-108 or other applicable~~
22 law. The department may also impose sanctions in the form of denial of medicaid payments for new
23 admissions or other penalties or sanctions as described in 53-6-111 or Title XIX of the Social Security Act,
24 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies.

25 (2) The department may impose a civil monetary penalty, with interest not to exceed 12% ~~per~~
26 ~~annum~~ a year, for each day that a facility is substantially out of compliance with standards or participation
27 requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not
28 limited to standards adopted by the department of health and environmental sciences under the authority
29 of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and
30 may be applied to the protection of the health and property of residents of health care facilities that the

department finds deficient, including but not limited to payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to ~~assure~~ ensure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 14. Section 53-6-108, MCA, is amended to read:

"53-6-108. Rules governing sanctions or remedies. The department shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by the department of health and environmental sciences or those federal standards established in 53-6-106 applicable standards imposed by state or federal laws, regulations, rules, or policies may not exceed ~~\$1,000~~ \$10,000 for each day that the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

Section 15. Section 53-6-111, MCA, is amended to read:

"53-6-111. Department charged with general administration and supervision of medical assistance program -- overpayment recovery -- sanctions for fraudulent and abusive activities -- adoption of rules to punish fraud. (1) The department of social and rehabilitation services ~~is hereby authorized and empowered to may~~ administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in ~~chapter Title 53, chapter 2, of this title, as amended, and this chapter~~ and as ~~contemplated by the provisions of~~ that is in compliance with Title XIX of the federal Social Security Act.

(2) (a) The department is entitled to collect from a provider, and a provider is liable to the department for:

1 (i) the amount of a payment under this part to which the provider was not entitled, regardless of
2 whether the incorrect payment was the result of department or provider error or other cause; and

3 (ii) the portion of any interim rate payment that exceeds the rate determined retrospectively by the
4 department for the rate period.

5 (b) In addition to the amount of overpayment recoverable under subsection (2)(a), the department
6 is entitled to interest on the amount of the overpayment at the rate specified in 31-1-106 from the date 30
7 days after the date of mailing of notice of the overpayment by the department to the provider, except that
8 interest accrues from the date of the incorrect payment when the payment was obtained by fraud or abuse.

9 (c) The department may collect any amount described in subsection (2)(a) by:

10 (i) withholding current payments to offset the amount due;

11 (ii) applying methods and using a schedule mutually agreeable to the department and the provider;

12 or

13 (iii) any other legal means.

14 (d) The department may suspend payments to a provider for disputed items pending resolution of
15 a dispute.

16 (e) The fact that a provider may have ceased providing services or items under the medical
17 assistance program, may no longer be in business, or may no longer operate a facility, practice, or business
18 does not excuse repayment under this subsection (2).

19 ~~(2)(3)~~ The department shall adopt rules establishing a system of penalties and sanctions applicable
20 to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper
21 activities fraud and abuse. The Subject to the definitions in [section 1], the department shall define by rule
22 those activities which are fraudulent, abusive, or improper rules must include but are not limited to
23 specifications regarding the activities and conduct that constitute fraud and abuse.

24 ~~(3)(4)~~ The penalties or Subject to subsections (5) and (6), the sanctions imposed under rules
25 adopted by the department under subsection (3) may include but are not limited to:

26 (a) required courses of education in the rules governing the medicaid program;

27 (b) withholding of payments to offset previous improper payments to a provider;

28 ~~(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent,~~
29 ~~abusive, or improper activities;~~

30 ~~(d) suspension of participation in the program for a specified period of time; and~~

1 ~~(e)(c)~~ permanent termination of participation in the medical assistance program; and
 2 (d) imposition of civil monetary penalties imposed under rules that specify the amount of penalties
 3 applicable to a specific activity, act, or omission involving intentional or knowing violation of specified
 4 standards.

5 ~~(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent,~~
 6 ~~abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from~~
 7 ~~the date of such payment.~~

8 (5) In all cases in which the department may recover medicaid payments or impose a penalty or
 9 sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part
 10 6. This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to
 11 recovery of overpayment or imposition of sanctions.

12 (6) The remedies provided by this section are separate and cumulative to any other administrative,
 13 civil, or criminal remedies available under state or federal law, regulation, rule, or policy."

14

15 **Section 16.** Section 61-5-405, MCA, is amended to read:

16 **"61-5-405. Offenses furnishing ground for suspension or revocation of license -- return to licensing**
 17 **jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1),
 18 subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the
 19 definition of felony as provided in 45-2-101(21), and 61-7-103, respectively.

20 (2) In addition to convictions mentioned ~~above~~ in subsection (1), the department, for the purpose
 21 of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect
 22 to the conduct reported as it would if ~~such~~ the conduct had occurred in this state for:

23 (a) convictions of perjury or the making of a false affidavit relating to the ownership or operation
 24 of a motor vehicle (61-5-303); and

25 (b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

26 (3) Court abstracts or reports of conviction received by the department that name an individual
 27 licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not
 28 take action against the driver's license or driving privilege of the individual as may be required elsewhere
 29 in this title."

30

1 **NEW SECTION.** **Section 17. Codification instruction.** (1) [Sections 1 through 6] are intended to
2 be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part
3 1, apply to [sections 1 through 6].

4 (2) [Section 7] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the
5 provisions of Title 45, chapter 6, part 3, apply to [section 7].
6

7 **NEW SECTION.** **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
9 applications, the part remains in effect in all valid applications that are severable from the invalid
10 applications.
11

12 **NEW SECTION.** **Section 19. Effective dates.** (1) [Sections 1 and 6 through 18 and this section]
13 are effective on passage and approval.

14 (2) [Sections 2 through 5] are effective July 1, 1995.

15 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0293, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill revising the laws related to Medicaid fraud and establishing a Medicaid Fraud Control Unit at the Department of Justice (DOJ).

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate the fiscal impact of this proposed legislation.
2. The Executive Budget contains a new proposal within the Department of Social and Rehabilitation Services (SRS) to fund the Medicaid Fraud Control Unit.
3. Funds will need to be transferred from SRS to DOJ. Federal regulations stipulate that the state Medicaid agent (SRS) cannot perform the Medicaid Fraud investigations. (Please see Technical Note below.)
4. DOJ will require 7.00 FTE and associated operating expenses for operating the fraud control unit. Operating costs include start up costs for vehicles, law enforcement equipment, computers/software, and office equipment (FY96 only - \$132,955). Additionally, ongoing operating costs are projected at \$87,017 in FY96 and \$87,064 in FY97. FTE costs are:

	<u>FY96</u>	<u>FY97</u>
3 crim. investigators/agents - grade 16 (36,769 in FY96 and 36,900 in FY97)	110,307	110,700
1 crim. prosecutor - grade 19	47,379	47,551
1 auditor - grade 14	31,364	31,475
1 investigative assistant - grade 14	31,364	31,475
1 administrative support - grade 10	<u>23,275</u>	<u>23,353</u>
TOTALS	243,689	244,554

5. Funding for the Fraud Control Unit is 75% federal funds and 25% general fund.
6. Cost recoveries and cost avoidance will begin to occur in SRS during the second year of the program operation. Based upon a similar program for Workers' Comp, these cost savings are expected to be \$3.00 for each dollar invested in the fraud control program. Based on annual expenditures of \$400,000, savings are estimated to be \$1.2 million in Medicaid benefits in FY97. Funding for the Medicaid benefits during FY97 is 69.00% federal funds and 31.00% general fund.
7. Upon approval of this proposed legislation, an appropriation for the DOJ will be included in HB2 for this unit. The SRS budget, which currently contains a new proposal which transfers funds of \$400,000 per year (25% general fund and 75% federal funds) for funding this unit, will likewise be adjusted.
8. General fund savings in the 1997 biennium will be about \$90,277.

(continued)

Dave Lewis 2-9-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Ethel Harding 2-10-95
ETHEL HARDING, PRIMARY SPONSOR DATE

Fiscal Note for SB0293, as introduced

SB 293

(continued)

FISCAL IMPACT:FY96
DifferenceFY97
DifferenceDepartment of JusticeExpenditures:

FTE	7.00	7.00
Personal Services	243,689	244,554
Operating expenses	87,017	87,064
Equipment	<u>132,955</u>	<u>0</u>
Total	463,661	331,618

Funding:

General fund from Justice (01)	15,915	0
General fund from SRS (01)	100,000	82,904
Federal Funds (03)	<u>347,746</u>	<u>248,714</u>
Total	463,661	331,618

Department of SRSExpenditures:

Transfers to DOJ	400,000	331,618
Medicaid Benefit Savings	<u>0</u>	<u>(1,200,000)</u>
Total	400,000	(868,382)

Funding:

General Fund (01)	100,000	(289,096)
Federal Funds (03)	<u>300,000</u>	<u>(579,286)</u>
Total	400,000	(868,382)

Net Impact:

General Fund (01)	115,915	(206,192)
-------------------	---------	-----------

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Additional savings will accrue in future biennia from cost aversion and recovery of Medicaid funds.

HEARING ON SB 293Opening Statement by Sponsor:

SENATOR ETHEL HARDING, SD 37, Polson, said SB 293 was requested by the Department of Social and Rehabilitation Services. It revises the laws relating to Medicaid fraud and abuse, recovery of Medicaid overpayments, and imposes sanctions for Medicaid fraud and abuse, and health care facilities to comply with applicable standards and requirements, and establishes a Medicaid fraud and abuse unit in the Department of Justice. She discussed proposed amendments. EXHIBIT 11.

{Tape: 1; Side: 2; Comments: tape malfunction, lost 30 seconds.}

Proponents:

Nancy Ellery, Administrator, Medicaid Services Division, Department of SRS, said SB 293 will improve the ability to prevent and respond to Medicaid fraud and abuse. This bill is important to help control Medicaid costs. Last year over \$300,000,000 to over 7,000 providers in Montana. The vast majority of the providers are honest, but there are some who aren't. Health care is big business, so where there is fraud and abuse it amounts to a lot of money. Applying the national estimates of health care fraud to the Montana program, there could be about \$30,000,000 in Montana. SB 293 would establish a fraud control unit in the Department of Justice, supervised and under control of the Attorney General's office. Their primary duty would be to investigate fraud and abuse under the Medicaid program, and look at establishing a criminal offence, designed to address specific activities. Some examples of fraud by providers are: bill for services not provided, bill twice for the same service, cost reports can be falsified, and bill for unnecessary services. The fraud unit would investigate and prosecute the identified cases. Montana is one of nine states that does not have a Medicaid fraud unit and are now mandated by the federal government, with 75% of the funding from the federal government. The other major provision of the bill is the revision of current Medicaid law concerning Medicaid overpayment, recovery, and policy relating to sanctions for Medicaid fraud and abuse, with penalties to providers who do not submit complete, accurate, and honest information. It also revises law to comply with federal requirements relating to health care facilities, such as nursing homes. She said this Medicaid fraud unit will pay for itself by the second year of operation. If the savings are comparable to the Workers Comp fraud unit, there will be a \$3.00 saving for every \$1.00 spent on this activity.

Denzel Davis, Administrator of the Health Facilities Division, Department of Health and Environmental Sciences, said he would address two issues of SB 293. He presented written testimony. EXHIBIT 12.

Mike Batista, Administrator, Law Enforcement Division, Department of Justice, said the Medicaid fraud unit fits well with the other programs of Work Comp fraud and welfare fraud, and anticipates eventual savings with the Medicaid fraud unit. There have been savings realized from both Work Comp and welfare fraud investigations, plus there is a deterrent factor. The word is out that the state will prosecute and criminal investigation will be initiated for cases of fraud.

Jerry Loendorf, representing the Montana Medical Association, spoke briefly in support for SB 293.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR KLAMPE said he had called Nancy Ellery's office about one of his patients, who he had suspected of fraud. He was disturbed that he got no information regarding an investigation from her office. Because he was treating this patient, who may or may not have been guilty of fraud, and he had no way to get any information. The department was not cooperative, at all.

Nancy Ellery said SB 293 addresses recipient fraud, but once a case is referred to the Department of Justice, no information can be released until the investigation is complete.

SENATOR KLAMPE asked if there's anything in this bill to address the person continuing to receive free treatment, while under investigation or found guilty.

Nancy Ellery said a person is allowed to maintain eligibility while the investigation is being done. Depending on the outcome, appropriate action will be taken.

SENATOR KLAMPE asked if appropriate action includes notifying the provider immediately.

Nancy Ellery said, after the investigation is complete, the provider is notified.

Greg Gould, Attorney for SRS, said the bill does not specifically state the provider would be notified, but when eligibility is terminated, the provider would be notified.

Closing by Sponsor:

SENATOR HARDING said, after the Legislature made the step in fraud control in Workers Comp, SRS contacted her about controlling fraud in Medicaid. She said the program will pay for itself, once it gets going, but the best part, when the public is aware of fraud control units, the incidence is reduced.

EXECUTIVE ACTION ON SB 307

Motion: SENATOR BENEDICT moved the AMENDMENTS, IN CONCEPTION, TO SB 307 DO PASS.

Discussion: SENATOR BENEDICT read the amendment. Page 1, line 15 after the ".", insert "Such use will remain under the licensure and regulation of the Board of Medical Examiners." Page 2, line 1, insert after needles "used to perform acupuncture." This would satisfy the concerns of the Montana Medical Association, and the Board of Medical Examiners has agreed to the language.

SENATOR MOHL came in.

Vote: The Do Pass motion for the AMENDMENTS to SB 307 CARRIED UNANIMOUSLY.

Motion: SENATOR BENEDICT moved SB 307 DO PASS AS AMENDED.

Discussion: SENATOR FRANKLIN asked if the concerns of the herbalists addressed.

SENATOR BENEDICT said the concerns of the acupuncturists were dealt with, but the concerns of Dr. Roger Wicke were not.

SENATOR ECK said there was no method for certifying or accrediting people who deal in food therapy. Some acupuncturists get that training and some do not.

SENATOR BENEDICT said there is rule-making authority by the Board of Medical Examiners that would deal with that issue.

SENATOR ESTRADA asked if the Medical Association is comfortable with the needle issue.

Jerry Loendorf said they were.

Vote: The Do Pass motion for SB 307 AS AMENDED CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 293

Motion/Vote: SENATOR BURNETT moved the AMENDMENT to SB 293 DO PASS.

Discussion: Susan Fox read the amendment.

Vote: The Do Pass motion for the AMENDMENT to SB 293 CARRIED UNANIMOUSLY.

Discussion: SENATOR KLAMPE proposed an amendment for SB 293, page 4, lines 24, after federal agencies, insert "and health care providers working on that patient."

{Tape: 2; Side: 1}

Nancy Ellery said it's against the rules, but is a liability issue.

SENATOR KLAMPE asked if his understanding was correct, regarding termination of medical care. The medical care a person is receiving can't be terminated, in the middle of eligibility, even though that person was determined to be guilty.

Nancy Ellery said, until the investigation is totally complete, no action can be taken against the recipient. Until all of the necessary investigation, prosecution, and appeals are done, no action can be taken against the recipient, unless there is a conviction.

SENATOR BAER asked if it's possible to legally give notice to the health care provider, that an investigation is pending.

Nancy Ellery said they can notify the individual who made the referral, that the case has been referred to the Justice Department.

SENATOR BENEDICT asked if this could be done under rules.

Nancy Ellery said yes, they could.

SENATOR BENEDICT asked if they would.

Nancy Ellery said yes

SENATOR KLAMPE withdrew his proposed amendment.

Motion: SENATOR FRANKLIN moved SB 293 DO PASS AS AMENDED.

Discussion: SENATOR BENEDICT said he is in favor of this bill because this was done to Workers Comp in the last session, even providing additional manpower in the Justice Department. He said there may be some concern, on the floor, that it's going to cost money during the first year, but should bring money back in during the second year.

SENATOR BAER said he wants it established, for the record, that the Department of SRS will take care of SENATOR KLAMPE's concerns, and under the rules, will notify the individual who referred the case.

Nancy Ellery said, for the record, they will take care of it.

Vote: The Do Pass motion for SB 293 AS AMENDED CARRIED
UNANIMOUSLY.

EXECUTIVE ACTION ON SB 226

Motion/Vote: SENATOR ECK moved the AMENDMENTS to SB 226 DO PASS.
The Do Pass motion for the AMENDMENTS to SB 226 AS CARRIED
UNANIMOUSLY.

Motion/Vote: SENATOR FRANKLIN moved SB 226 DO PASS AS AMENDED.
The Do Pass motion for SB 226 AS AMENDED CARRIED UNANIMOUSLY.

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL

DATE 2/17/95

[illegible]

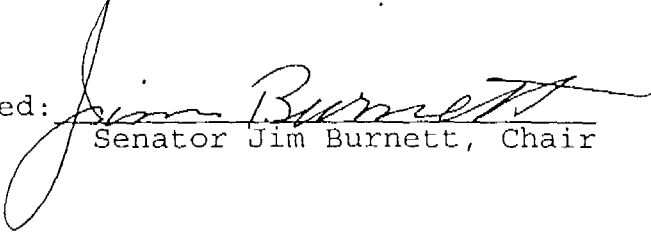
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 18, 1995

MR. PRESIDENT:

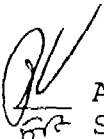
We, your committee on Public Health, Welfare, and Safety having had under consideration SB 293 (first reading copy -- white), respectfully report that SB 293 be amended as follows and as so amended do pass.

Signed: 
Senator Jim Burnett, Chair

That such amendments read:

1. Page 8, line 9.
Following: "is"
Insert: "not"

-END-


Amd. Coord.
Sec. of Senate

420951SC.SPV

Mr. Chairman and members of the Committee I am Denzel Davis, Administrator of the Health Facilities Division with the Montana Department of Health and Environmental Sciences.

I am here today to speak in support of SB 293 that would establish a Medicaid Fraud Control in the Department of Justice.

The formation of a Medicaid Fraud Control Unit of this bill would have particular relevance to the Certification Bureau of the Health Facility Division. The Certification Bureau has the federal responsibility to maintain a nurse aide abuse registry. The Department of Health and SRS have a shared responsibility between Medicare and Medicaid to investigate allegations of resident abuse and neglect. At this point in time the only individuals being placed on the abuse registry are those nurse aides who have been convicted at the county level of a crime through the courts. We have seen wide disparities in how individual county attorneys handle these kinds of cases. Some county attorneys have been aggressive about pursuing these cases of staff abuse of nursing home residents, others have not. We have situations where an individual in one county has been prosecuted for committing abuse, but the same or similar offense in another county has gone unprosecuted. This bill would bring much needed statewide consistency and uniformity in the prosecution of these cases of abuse and neglect.

Manual instructions from the Health Care Financing Administration direct the state survey agency to refer all complaints alleging neglect, abuse, or misappropriation of resident property in a nursing home receiving Medicaid funds to the State Medicaid Fraud Control Unit. At this time we can not comply with this directive because no such unit exists in Montana.

The Certification Bureau has received 131 reports of allegation of nurse aide abuse, neglect or misappropriation of resident property during the past year in Montana Nursing Homes. Creation of a Fraud Control Unit would greatly assist the Department of Health in addressing these issues in nursing homes.

We would urge you to support the passage the SB 293. Thank You.

SENATE HEALTH & WELFARE
EXHIBIT NO. 11
DATE 2/17/95
BILL NO. SB 293

Amendment to Senate Bill 293
Medicaid Fraud Control Unit Legislation
Introduced Bill

Prepared by Greg Gould
February 17, 1995

1. Page 8, line 9.
Following: "is"
Insert: "not"

Rationale: The proposed amendment is necessary to correct a technical error in the drafting of the bill. The unintentional omission of the word "not" would reverse the intended effect of the subsection. The amendment is necessary to ensure that the bill exempts protected activity from criminal prosecution.

- end -

DATE 2/17/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 401, 307, 293, 226

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Jo Rigg		307		✓
DENZEL DAVIS	DHES	293	✓	
Nancy Elley	DSRS	293	✓	
Bridgette Mazurek	MAAOM	307	✓	
Gloria HERMANSON	MT Psychological Assoc	# 226	Amend	
Cheryl Smith	Commerce POL. - Staff	401	Info Only	
MARY C. NAILIN	POL Bldg SWPC	226	info	
TOM BUMP	Acupuncturists	307	✓	
SARA MARIE	MAAOM	307	✓	
Barb Bayer	Acupuncturist	307	✓	
Pat Melby	Rimrock Foundation	226	✓ w/ amendment	
Bob Torres	MT. Chap. NASW	226	✓ w/ Amend.	
Ronie Hamrah	myself	307	X	
13 J. Kolman	Self	307	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/17/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 401, 307, 293, 226

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Jerome Loendorf	Mt. Pleasant Assn	307		C
Jerome Loendorf	" " "	293	✓	
Sue WEINGARTNER	MT FUNERAL DIRECTORS ASSN	401	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE HUMAN SERVICES & AGING

Page 6

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0240	VAN VALKENBURG, FRED	RESTRICTED LICENSE FOR FOREIGN-TRAINED PHYSICIAN UNDER CERTAIN CONDITIONS	2/20	3/06	CONCUR	03/06	VOTE: 16-0	3/07	
SB0244	WATERMAN, MIGNON	REQUIRE PERMANENT PLACEMENT PLAN FOR CHILDREN & REVIEW OF ADOPTION LAW	2/15	3/03	CONCUR	03/20	VOTE: 16-0	3/22	
SB0270	BURNETT, JIM	RECORD DESTRUCTION IF CHILD DETERMINED NOT TO BE ABUSED OR NEGLECTED	2/15	3/03	CONCUR	03/03	VOTE: 14-0	3/06	
SB0271	BURNETT, JIM	CLARIFY POLICY REGARDING CHILD PLACEMENT	2/20	3/03	CONCUR AS AMENDED	03/10	VOTE: 13-0	3/13	
SB0293	HARDING, ETHEL	ESTABLISH MEDICAID FRAUD AND ABUSE UNIT AND LAWS	2/22	3/10	CONCUR AS AMENDED	03/22	VOTE: 15-	3/24	
SB0310	JACOBSON, JUDY	REVISE PHYSICIAN ASSISTANT LAW ON PRESCRIPTIONS AND VOTING	2/20	3/06	postponed 03/06	CONCUR	03/13	VOTE: 13-3	3/16
SB0339	CHRISTIAENS, CHRIS	REVISE HEALTH INSURANCE COVERAGE FOR MENTAL HEALTH, CHEMICAL DEPENDENCY	3/09	3/20	CONCUR AS AMENDED	03/22	VOTE: 14-1	3/27	
SB0385	ECK, DOROTHY	AUTHORIZE PROVISION OF MEDICAL SERVICES FOR CHILDREN INELIGIBLE FOR MEDICAID	3/27	3/31	CONCUR	03/31	VOTE: 15-1	4/04	
SB0388	HARP, JOHN	CREATE SYSTEM OF MEDICAID MANAGED CARE	2/27	3/15	CONCUR	03/22	VOTE: 14-1	3/24	
SB0395	BARTLETT, SUE	REVISE BD OF NURSING LAWS; PROVIDE TEMP WRK PRMIT FOR NURSES AWAITING CERTIF	2/27	3/20	CONCUR AS AMENDED	03/22	VOTE: 16-0	3/24	
SB0401	CHRISTIAENS, CHRIS	REQUIRE DISCLOSURE OF INFECTIOUS DISEASE TO MORTUARY PERSONNEL	2/22	3/08	CONCUR	03/13	VOTE: 15-0	3/16	
SB0416	SWYSGOOD, CHUCK	REVISE CERTIFICATE OF NEED LAWS -- CONTINGENT REPEALER	3/14	3/20	CONCUR	03/22	VOTE: 16-0	3/24	

discretionary requirement for public health inspections, modifying the enforcement provisions.

Proponents' Testimony:

Dale Taliaferro, Administrator of Health Services Division.
EXHIBIT 1

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SEN. CRISMORE said that SB 124 was a simple bill and would make it easier for the health departments to do their jobs.

EXECUTIVE ACTION ON SB 124

Motion/Vote: REP. BRUCE SIMON MOVED THAT SB 124 BE CONCURRED IN. The motion carried unanimously.

{Tape: 1; Side: A; Approx. Counter: 120; Comments: NA.}

HEARING ON SB 293

Opening Statement by Sponsor:

SEN. ETHEL HARDING, SD 37, Polson, stated that SB 293 would revise the laws related to Medicaid fraud and abuse and establish a Medicaid fraud control unit in the Department of Justice.

Proponents' Testimony:

Nancy Ellery, Administrator of the Medicaid Services Division.
EXHIBIT 2

Mike Batista, Administrator of the Law Enforcement Services Division, said that his division works on fraud including welfare and workers' compensation fraud. There currently is a five-to-one return on investment on workers' compensation fraud. For every dollar invested in the enforcement program there is a \$5 savings. The program has been in effect for one and a half years and has saved over \$2 million for State Fund. Over 400 felony investigations have taken place in the area of welfare fraud with cases totalling over \$4 million. Social and Rehabilitation Services (SRS) came to their bureau to take on the fraud enforcement function. This is important for the cost savings but also as a deterrent.

Opponents' Testimony: None

Informational Testimony: None

{Tape: 1; Side: A; Approx. Counter: 400; Comments: NA.}

Questions From Committee Members and Responses:

REP. BRUCE SIMON clarified that doctors' offices have all the welfare information available, but they keep changing what is required. Are they going to be held responsible when the rules are changed and they haven't been able to keep up with all the information switches. He asked where the dividing line would be between false reporting and honest mistakes in paperwork.

Mr. Batista replied that it was often the defense in Medicaid fraud cases that there was not enough education about the changes in the process. State investigators would take that under advisement before taking it to court for prosecution.

Greg Gould, Legal Counsel for SRS, clarified that the section in the bill they were referring to is not a criminal section. There are separate standards in the criminal code. These would be intentional cases where they knew and intended to defraud the programs. Medicaid statute provisions work to tell providers that they have a certain responsibility to be honest and submit correct documentation in cases where there were overpayments that they were not entitled to.

REP. SIMON asked for an explanation on what the terminology means when a person "purposely" and "knowingly" commits fraud. Mr. Gould said that the definitions were included in the bill on page 12, line 21, and on page 16, line 11.

REP. ELLEN BERGMAN asked what was done previously in the area of Medicaid fraud and is it separate from the work done on the Workers' Compensation fraud.

Ms. Ellery stated that there has always been limited resources to investigate fraud. The Surveillance and Utilization Review Unit, within the Medicaid Division, works with referrals and investigations. They need to devote maximum resources to the recoveries of Medicaid fraud. Workers' Compensation has their own fraud unit.

REP. BERGMAN inquired if they have more staff. Ms. Ellery said that the federal government required that seven additional positions be dedicated to the unit.

REP. LOREN SOFT asked what the liability of a board of directors of a private entity would be if fraud was committed either knowingly or unknowingly.

Mr. Gould clarified that the section referred to is not part of the criminal code so the person would not be liable criminally. The section is intended to clarify when a provider is participating in the program, it is their responsibility to supervise all those who work on the forms.

REP. SOFT asked if the supervisor would be liable for a person who made a fraudulent claim. **Mr. Gould** answered that the supervisor would not be liable but whoever the provider was that received the payment from Medicaid would be liable in the sense that they would have to pay the money back, but there would be no personal liability.

REP. SIMON questioned why the Abortion Control Act was brought into this bill.

{Tape: 1; Side: B; Approx. Counter: 00; Comments: NA.}

Mr. Gould explained that there was no substantial change in the section, but the criminal statute that is added for Medicaid fraud had some definitions that went along with it. These were inserted into the section in the criminal code and caused the renumbering of the sections.

REP. SIMON wanted to know if an office manager in a doctor's office had the information, would they, by virtue of their position, be knowingly committing fraud? **Mr. Gould** stated that the controlling definition of the term "knowingly" would be in the section contained in the criminal code that was discussed earlier. He said that it is not the intent of the bill to leapfrog from this section over to establishing criminal intent.

REP. SIMON asked **Mr. Gould** if he was an attorney and he said he was.

REP. SIMON asked for expansion on the terms he was having difficulty with. **David Niss, Legislative Council**, explained that what would be in question is the state of mind of someone defrauding the system and the degree of criminal intent. He noted the penalty for purposely or knowingly committing fraud as related beginning on page 7, line 15 of the bill, focusing on page 8, line 15.

Mr. Gould stated that an interpretation would be contrary to the specific definition of knowingly that occurs in the criminal statute. The criminal statute definition of knowingly specifically defines the term "highly probable" and the presumption of the mental state would be unconstitutional.

REP. JOHN BOHLINGER wondered if such language existed in other states' laws dealing with fraud. **Mr. Gould** replied that the language used in Montana was modeled after language from another state's statute. The Workers' Compensation fraud unit

legislation has some provisions that addressed some of the basic responsibilities of providers and claimants to be truthful.

REP. SIMON asked for clarification as to the purpose of section 6, especially subsection (3). Mr. Gould reiterated that it is not the intent to overreach and the purpose is to address the problem of supervisors attempting to escape the responsibility of repaying overpayment. It is important to show that they have a responsibility to supervise their employees who submit claims on their behalf.

REP. SIMON voiced his opinion that there would not be a need for subsection (3). Mr. Gould stated that the subsections cover different aspects of the problem. Subsections (1) and (2) cover the ability of collecting an overpayment back. If there are providers abusing the program there may be sanctions and then it becomes important to look at whether the person was aware of what they were doing. This is intended to make the supervisors more aware and responsible.

REP. SIMON asked if he would be willing to submit a statement for the committee record that would help clarify the intent of section 6. Mr. Gould stated that he would be glad to.

{Tape: 1; Side: B; Approx. Counter: 560; Comments: NA.}

REP. LIZ SMITH voiced her concerns about what Medicaid was doing to inform people of the frequent changes that occur. Ms. Ellery explained that her department spends a lot of time on educating providers of the frequent changes in requirements. They give out provider manuals and have a toll-free number as well as provider training.

Mr. Batista cited an example of a fiscal manager of a non-profit organization that was turning over a huge profit over the course of five years. He knowingly double-billed the Medicaid office and committed fraud. It was an example that showed intent and where the term knowingly would be applicable.

REP. SOFT stated that in Title 45 a person could be defined as a corporation or partnership and was concerned that the word "incomplete" was included in regard to fraudulently filling out a Medicaid claim. Mr. Gould explained that many staff members fill out the claims and it is actually the provider who receives payment. There is a misconception that sections 6 and 7 of the bill are related and they are not. For there to be a criminal offense it has to be by purposefully or knowingly obtaining a payment, not just an error or mistake.

REP. SOFT asked what would happen when a provider would take advantage of a gray area. Mr. Gould said that there were areas in which the rules were not entirely clear. The provider should inquire about the circumstance and when they disregard the risk that is not a criminal liability situation but falls under the

category of abuse. Providers would be sanctioned if patterns of misconduct were found.

REP. DEB KOTTEL asked if a director of a corporation would be personally liable through the imputed knowledge theory for the nonpayment of payroll taxes. Mr. Gould stated that the private provider was responsible for the payroll tax. They can't get out of it just because they said they didn't know.

REP. KOTTEL asked if there was a trend in the laws becoming tougher when there are public policy reasons such as Medicaid fraud. Mr. Gould stated his surprise that there has not been a more specific statement of the policy in the Montana code prior to this time.

REP. KOTTEL said that principals are liable civilly for the actions of their agents as long as they acted under the scope of their employment. Mr. Gould remarked that there are around 250,000 claims per month. If those claims are facially correct they will be processed and paid. If through further investigation there is found to be an overpayment, then repayment will be due.

REP. L. SMITH felt that too much pressure was being placed on the supervisors to make accurate decisions if they are not fully informed of the rules and regulations that are supposedly being followed by their employees. She wanted to see a better way to alert providers of information that comes to them that they are required to read and understand right away.

Ms. Ellery clarified that there is a section in the bill for providers and submitting information and that section has nothing to do with the recipient and whatever fraud they might commit. They sign a statement that says they are submitting the most accurate information possible.

REP. SIMON asked if the people who process Medicaid claims make mistakes and to what standard are those people going to be held in comparison to those who fill out the claims. Ms. Ellery said they do make mistakes and part of their contract with the fiscal agent provides penalties for not having good performance standards. Those individuals are targeted and the department tries to educate or train them if it is a problem of simply not understanding the process.

Closing by Sponsor:

SEN. HARDING stated that fraud control is funded 75% federally and 25% from the general fund. The cost recoveries and cost avoidance will begin to occur in SRS during the second year of the program operation. The cost savings is expected to be \$3.00 for each \$1.00 invested in the fraud control program and the program will eventually pay for itself.

{Tape: 2; Side: A; Approx. Counter: 485; Comments: NA.}

HEARING ON SB 226

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Billings, said that SB 226 is a bill to clarify the definition of licensed clinical professional counselors (LCPCs). There are various levels of training and ability in counseling within the continuum of mental health services. The definitions of the types of counselors need to be established so the person seeking counseling knows what level of expertise they are receiving. A prepared amendment will be presented for the inclusion of psychiatrists.

Proponents' Testimony:

Dr. Bob Bakko, Licensed Clinical Professional Counselor, Executive Director of Northwest Counseling Centers, mentioned that this was an important bill for counselors in that they share within the mental health provider continuum of care a relationship with psychologists, social workers and psychiatrists. Those titles and practices can't be duplicated or interchanged. Professional counselor as a title is protected under title law, but the practices themselves are not. The problem is that literally anyone in Montana can put out a shingle as a counselor without meeting any minimum standards, training requirements, degrees, or certifications. The primary issue in introducing the change in the law is for consumer protection. If someone is a licensed counselor, they have to practice within the scope of the law and stand at risk for complaints from anyone in the community. It is a painful process to go through and many wish not to be subject to it. There are strict guidelines that must be followed and they are required to keep malpractice insurance. He submitted photocopies of pages from phone books showing examples of mis-representation. EXHIBIT 3

{Tape: 2; Side: B; Approx. Counter: 00; Comments: This side of the tape is blank and testimony was not recorded due to tape recorder malfunction. Notes from meeting for Tape 2, Side B are submitted as EXHIBIT 4. The names of proponents are listed as shown in the secretary's notes. The meeting resumed on Tape 3, Side A.}

Dr. Quinton Helan, Missoula. EXHIBIT 5

Mary McCue, Montana Clinical Mental Health Counselors.

Bob Torres, NASW.

Gloria Hermanson, Montana Psychology Association.

Darryl Bruno, Alcohol and Drug Abuse Division, SRS.

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 3-10-95

NAME	PRESENT	ABSENT	EXCUSED
✓ Rep. Duane Grimes, Chairman			✓
✓ Rep. John Bohlinger, Vice Chairman, Majority	✓		
✓ Rep. Carolyn Squires, Vice Chair, Minority	✓		
✓ Rep. Chris Ahner	✓		
✓ Rep. Ellen Bergman	✓		
✓ Rep. Bill Carey	✓		
✓ Rep. Dick Green	✓		
✓ Rep. Toni Hagener	✓		
✓ Rep. Deb Kottel	✓		
✓ Rep. Bonnie Martinez	✓		
✓ Rep. Brad Molnar		✓	
✓ Rep. Bruce Simon	✓		
✓ Rep. Liz Smith	✓		
✓ Rep. Susan Smith		✓	
✓ Rep. Loren Soft	✓		
✓ Rep. Ken Wennemar	✓		

TESTIMONY OF THE DEPARTMENT OF SRS
HOUSE HUMAN SERVICES AND AGING COMMITTEE
SB293-MEDICAID FRAUD AND ABUSE

SB 293 will significantly improve the state's ability to prevent and respond to medicaid fraud, abuse and overpayment. The bill will also improve the state's ability to address substandard care in health care facilities and patient abuse and neglect, and theft of patient property. These measures are important components in the continuing effort to control the cost of the medicaid program.

Medicaid paid out approximately \$300 million dollars to over 7000 medical providers in 1994. While the vast majority of health care providers are honest, health care is big business. If you apply national fraud estimates of ten percent to Montana, the problem of Medicaid fraud and abuse could be costing the state over \$30 million. Fraud and abuse not only diverts scarce resources but also deprives those who are in need of health care.

I would like to briefly describe the major provisions of this bill.

Medicaid Fraud Control Unit

The bill would establish a medicaid fraud control unit in the Department of Justice, as required by federal medicaid law. The unit must employ necessary personnel for effective operation, including investigative, audit and legal staff. The unit would be under the supervision and control of the attorney general. The primary function of the unit is to investigate and prosecute fraud and abuse under the medicaid program. The bill also establishes a criminal offense specifically designed to address fraudulent activities under the medicaid program.

Medicaid Fraud, Abuse and Overpayments

The bill generally revises the laws regarding medicaid overpayment recovery and imposition of sanctions for medicaid fraud and abuse. The bill would establish specific responsibilities of medicaid applicants, recipients and providers related to the truth, accuracy and completeness of documents, statements and other information submitted to medicaid. The bill would establish responsibilities for providers with respect to employees submitting materials on the provider's behalf. The bill would amend current law to more clearly specify the law in the areas of overpayment recovery and imposition of sanctions for fraud and abuse.

Substandard Care in Health Care Facilities

The bill would revise current law to comply with federal requirements regarding sanctions applicable to health care facilities that fail to comply with applicable participation requirements. These changes would eliminate implications in current law that federal standards cannot be enforced unless

adopted as rules by DHES and that the authority of SRS to impose sanctions is limited to those cases where a health care facility fails to meet requirements adopted as rules by DHES. The proposed amendments would allow imposition of sanctions based upon failure to comply with applicable requirements imposed by law.

I urge your support of this important bill. Passage of this bill will significantly improve the state's ability to prevent and respond to fraud, abuse and overpayment in the Medicaid program. It will help to contain costs in the Medicaid program and conserve scarce resources for those in need.

would require is a program that has been approved by the American Association for Partial Hospitalization, and not that the program be offered by a member of that association. It was to clarify that difference.

Motion/Vote: REP. SQUIRES MOVED THE AMENDMENTS. The motion carried unanimously.

Motion: REP. SQUIRES MOVED THAT SB 339 BE CONCURRED IN AS AMENDED.

Discussion:

REP. SQUIRES said the bill makes a clear definition with regard to what actual coverage will incur, who will provide, and what the institutions will be.

CHAIRMAN GRIMES said there were no opponents on the bill.

Vote: Voice vote was taken. The motion carried unanimously.

EXECUTIVE ACTION ON SB 416

Motion/Vote: REP. SOFT MOVED THAT SB 416 BE CONCURRED IN. The motion carried unanimously.

{Tape: 1; Side: A; Approx. Counter: 350; Comments: n/a.}

EXECUTIVE ACTION ON SB 293

Motion: CHAIRMAN GRIMES MOVED THAT SB 293 BE CONCURRED IN.

Motion: REP. SIMON MOVED HIS FIRST AMENDMENT.

Discussion:

REP. SIMON said the reason these amendments were proposed was because if they are going to place duties on people with regard to knowing if a claim or statement is mis-represented or faulty or inaccurate, it seemed to him that the Department should make sure people are properly informed. The amendments asked for a program of instruction and assistance to the person submitting applications, claims and forms, so they can be better prepared.

CHAIRMAN GRIMES asked if the cost for this will be encompassed in the current fiscal note. He responded yes.

Vote: Voice vote was taken. The motion carried unanimously.

Motion: REP. SIMON MOVED HIS SECOND AMENDMENT.

Discussion:

REP. SIMON said the way the bill is written, it says that everything has to be in writing. Often people call up on the telephone and get oral advice from the Department, and they don't have it in writing, and while they give answers, the Department is not protected. So, he added the words "oral" and "advice" in the bill so when authorization is given over the phone, they are protected under the law.

CHAIRMAN GRIMES asked if that might not create a loophole in the bill. REP. SIMON said that wasn't his intent, but to create some fairness and there would have to be a notation in the documentation that they'd go along with it, but to have documents flying back and forth seemed cumbersome.

CHAIRMAN GRIMES clarified the amendment on page 8, line 14. REP. SIMON further clarified the amendment.

REP. DEB KOTTEL asked Mr. Niss if it would be just as well to delete the word "written" and the word "authorization" and if not, is the proper word "oral" or should it be "verbal"? Mr. Niss said he wasn't sure that related to the entire amendment because it also inserts advice. REP. KOTTEL asked again about her suggested wording. Mr. Niss said her wording might apply to the bill, but they should consider whether the Department has rulemaking authority to implement this section. Without further guidance by the committee, it would be possible for the Department to adopt a rule limiting it only to written. REP. KOTTEL asked if they could segregate the votes on the amendment in terms of "written" and "oral," and then a separate vote on adding the word "advice."

CHAIRMAN GRIMES said it was one amendment and she could propose a substitute amendment if she wished.

REP. SIMON said it could be divided if it was segregated in two parts.

CHAIRMAN GRIMES said if the parts were distinct, he thought in one case they're asking whether it be written or oral, and in the other case, it seemed like authorization or advice goes along with written or oral.

REP. SIMON said he was willing to segregate the amendment.

REP. SUSAN SMITH said that she thought if they were going to have this system, that people will have to be more careful about how the reports are completed. In the age of fax machines, it only takes a minute to have someone fax a paper that can provide information. She said they may be opening a large loophole, and while she knew that wasn't the intent, she didn't think it was a good idea. She suggested encouraging the use of fax machines if information was needed in a hurry.

REP. KOTTEL asked that they segregate the amendments and said the word "advice" is very different than "to be authorized." When someone from a department authorizes someone to take action, that is very distinct from when advice is given. She asked that they vote on the first part of the amendment, which would add the word "oral" as a separate motion.

Substitute Motion: CHAIRMAN GRIMES EXPLAINED THAT THEY WOULD BE VOTING ON THE FIRST HALF OF THE SECOND SIMON AMENDMENT, SEGREGATED BY REP. KOTTEL. A roll call vote was taken. The motion failed on a tie vote of 7-7.

Discussion:

REP. SIMON said he wanted it to be clear that when they talk about authorization and advice, they are two different things and what oftentimes people seek is advice, not authorization. If someone told them to do something wrong, they couldn't be held accountable. If the advice is given, they ought to be able to rely on it.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: n/a.}

REP. DICK GREEN said he agreed with what REP. SIMON said. He's been annoyed with the Internal Revenue Service, when it sounds like authorization and they say no, it's just advice. He said because it's written, it would be understood as authorization. He said they need this portion in the amendment.

Vote: Voice vote was taken. The motion to adopt the second half of the Simon amendment carried 13-1 with REP. AHNER voting no.

Motion: REP. SOFT MOVED HIS FIRST AMENDMENT (29303).

Discussion:

REP. SOFT said there were concerns about the far-reaching aspects about claim forms being sent in and how this action could be applied against forms that are inaccurate or misleading. The first amendment simply takes "incomplete, inaccurate or misleading" out of Section 6.

REP. SUSAN SMITH wondered why they would want to take that out, because "misleading" doesn't necessarily mean "false."

REP. SOFT said something could be misleading if the wrong box was checked, but it wouldn't be intentional.

Vote: Voice vote was taken. The motion carried 8-6 with REP. CAREY, AHNER, GREEN, KOTTEL, SUSAN SMITH, and WENNEMAR voting no.

{Tape: 1; Side: B; Approx. Counter: 128; Comments: n/a.}

Motion: REP. SOFT MOVED THE SECOND AMENDMENT (29304).

Discussion:

REP. SOFT explained his second amendment. REP. SQUIRES asked if she was a vendor and sold to clients as a provider, she wondered how she'd get into trouble with this amendment.

REP. SOFT said what they were saying is if that benefit was paid and she knew they were not eligible, they would get into trouble. Mr. Niss said that was correct and further clarified the amendment.

Vote: Voice vote was taken. The motion to adopt the second Soft amendment carried unanimously.

Motion: REP. SOFT MOVED HIS THIRD AMENDMENT (29305).

Discussion:

REP. SOFT explained this amendment pertaining to civil liability.

CHAIRMAN GRIMES said they are saying this will not be a criminal proceeding but a civil proceeding, and asked if it applied to the whole statute. REP. SQUIRES said it would fall under Title 53.

{Tape: 1; Side: B; Approx. Counter: 254; Comments: n/a.}

CHAIRMAN GRIMES asked if this would reinforce what is already in statute, or if they are going after Medicaid fraud, perhaps what they need is a criminal proceeding in some cases. He asked for some legal advice.

REP. KOTTEL asked if it would change the original intent of the section, or does it just clarify the section that it was always civil liability.

Mr. Niss explained that during the question/answer period at the hearing, he talked to Greg Gould, the Department's legal counsel, concerning the use of subsection (3) in section 6 which imputes knowledge to a provider, and whether that knowledge could be used to prove the state-of-mind element of the criminal offense under section 7. Mr. Gould said the application of that subsection would not work for three reasons: because it would negate the definition of "knowingly" in Title 45, Chapter 1; because it would probably be unconstitutional; and because that was not the intention of the Department. This amendment takes the Department at its word and simply says that subsection (6) applies only in a civil, rather than a criminal, proceeding.

REP. KOTTEL asked if it clarified the bill and wouldn't change the intent of the bill as drafted. Mr. Niss agreed.

CHAIRMAN GRIMES said section 6 is truthfulness, completeness and accuracy of submissions to Medicaid agencies would be a civil violation, as opposed to other parts of the bill which would be criminal.

Vote: A voice vote was taken. The motion to adopt the third Soft amendment carried unanimously.

Discussion:

REP. SIMON said he had a letter to clarify the bill. EXHIBIT 2

Motion: REP. SOFT MOVED HIS FOURTH AMENDMENT (29306).

Discussion:

REP. SOFT said this amendment picks up on the first amendment which again strikes incomplete, inaccurate and misleading, and affects section 7.

CHAIRMAN GRIMES asked why he didn't put it with the first amendment. REP. SOFT replied that it's a different section.

{Tape: 1; Side: B; Approx. Counter: 409; Comments: n/a.}

CHAIRMAN GRIMES asked REP. SOFT if the sponsor of the bill had seen the amendment. He said that he had not. **CHAIRMAN GRIMES** asked for the committee's permission to ask the Department's views on the amendment.

Mr. Greg Gould, Legal Counsel, Department of Social and Rehabilitation Services, said he had not seen the amendments previously, but understood that it would amend the criminal offense, section 7, so the criminal offense would be purposefully or knowingly making, submitting or authorizing a false claim, but would no longer be an offense if purposefully or knowingly submitted or authorized an incomplete, inaccurate or misleading claim.

CHAIRMAN GRIMES asked for an example of who would be impacted by the language "incomplete, inaccurate or misleading." Mr. Gould replied that there are many different kinds of services that require different combinations of documentation or authorizations, so there are many different possible scenarios. He said it was difficult to say, but explained that a false impression could be made by inaccuracy or incompleteness, when the intention is to be truthful.

REP. SIMON asked Mr. Gould about the words "inaccurate and incomplete" but wondered about the meaning of "misleading." He wondered if they struck the two words and left "misleading" so if a person submitted a false or misleading claim, if it would suffice. Mr. Gould said that would probably be adequate. In a conversation with Mr. Niss, he said they believed the intent was

that the incompleteness or inaccuracy would make a material difference; in other words, the person would end up receiving a payment they were not entitled to.

Substitute Motion: REP. SIMON MOVED TO ADOPT THE FOURTH SOFT AMENDMENT (29306), BUT STRIKE "OR MISLEADING." The motion carried 13-2 with REPS. MARTINEZ and SUSAN SMITH voting no.

Motion: REP. SOFT MOVED HIS FIFTH AMENDMENT (29307).

Discussion:

REP. SOFT explained that the amendment says that in order for a person to be criminally convicted for making a false claim, the person must have known that they were not entitled to the benefit.

REP. SQUIRES asked Mr. Niss if medical personnel would be held liable for charging an item to Medicaid if they were in error. REP. SOFT said he didn't believe this would be applicable to the amendment.

REP. SQUIRES restated her question about comfort items provided to patients that are not eligible expenses under Medicaid. Mr. Niss responded that this amendment had nothing to do with whether it's an individual working for a provider or a supervisor or the board of directors, or who is actually criminally liable. The criminality of the employees of a provider are resolved under other law in Title 45, Chapter 1, part 2, criminal responsibility for acts of a corporation, partnership, etc. The amendment does not apply there. What it would do is, assuming that a false claim (defined as a misrepresentation of fact made by someone with the authority to submit claims on behalf of the provider) is submitted. The issue is if the misrepresentation of fact, in and of itself, is sufficient to result in a conviction or must the state show that the person who submitted the false representation was trying to recover money that the person wasn't entitled to.

Vote: The motion carried unanimously.

Motion: REP. SOFT MOVED HIS SIXTH AMENDMENT (29308).

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. SOFT explained the amendment. Mr. Gould was asked to explain it further to the committee. He noted that they tried to eliminate the word "improper" because it seemed vague as used in the sentence. They were more concerned with defining the activities as having an intentional element, something wrongful, rather than just a mistake. The amendment would put the word "improper" back in. He just commented on the amendment and stated their intent. Otherwise, he didn't see too much difference or a problem, if the word "improper" was removed.

Either way, the Department would have to define the activities and conduct that constitute the words used.

CHAIRMAN GRIMES asked about the use of the word "improper" and how it would affect the original intent. **Mr. Niss** explained the context of the amendments. He said the issues were raised by private counsel for Medicaid providers. He gave an account of the intention of the bill and reiterated, in more statutory detail, what **Mr. Gould** said.

CHAIRMAN GRIMES asked **REP. SOFT** what the intention was of the phrase "but are not limited to." He thought it could be removed and still have the same impact, unless there were other reasons. He wanted an idea of the Department's intent. **REP. SOFT** deferred to **Mr. Gould**.

Mr. Gould said that the rulemaking could also include procedures, by which the Department could consider sanctions and other procedures. He cited the first line of subsection (3) where it says that the department shall adopt rules establishing a system of sanctions applicable to providers who engage in fraudulent abuse.

REP. KOTTEL said if they looked at subsection (3), they give the Department the authority to adopt rules to establish a system of sanctions, and she understood that to mean referring back to the rules, that in their rulemaking authority, they must make sure they have rules to deal with fraud and abuse. Her concern is that if the activities are not specifically defined, they would not be illegal. She wondered if defense lawyers might find a loophole in the statute if the language wasn't tighter.

Vote: Voice vote was taken. The motion to adopt the sixth Soft amendment carried 13-2 with **REP. SOFT** and **BERGMAN** voting no.

Motion: **REP. SOFT** MOVED HIS SEVENTH AMENDMENT (29309).

Discussion:

REP. SOFT said this amendment would require a hearing. **Mr. Niss** said the language that would be struck by the amendment are lines 12 and 13, on page 24 of the bill. This section does not require a hearing under the Montana Administrative Procedure Act, before recovery of overpayment or imposition of sanctions. The section to be amended as it's written in the bill, would allow SRS to impose sanctions for a false claim without holding a hearing.

REP. KOTTEL said she would oppose the amendment. She said currently, a pre-termination hearing is allowed before welfare benefits are terminated. But such a hearing is not required when disability benefits are at issue. She said the question is the level of severity of what is being taken, the risk of loss, and the economic cost of a pre-termination hearing. The amendment would require a pre-termination hearing prior to the removal or

the nonpayment of any benefits. She said that is a tremendous burden for the state to do in every case prior to demanding the return of benefit payments. When disability benefits are the issue, they can have a post-termination hearing. If the benefits are removed and they realize they may be wrong, the person has a right to a hearing. If the government takes the welfare benefits back under this amendment, she asked why they should make the state have a pre-hearing and she didn't think it was necessary, the risk of loss is minimal, and the economic cost is great to require a pre-hearing.

REP. LIZ SMITH asked REP. SOFT to respond to REP. KOTTEL'S statement. He said she was correct and that the issue has gone both ways in court cases. Whether it's fair or due process, it can go both ways.

REP. SIMON wondered about the recovery of an overpayment and sanctions. He thought sanctions were too harsh, and that due process may be in order. Whereas, recovery of an overpayment is a different level of severity. Mr. Gould wished to describe the intent of the amendment and said the statement to be deleted was intended to clarify the right of a hearing as granted in the statute, and did not necessarily have to be prior to the recovery of the overpayment or the imposition of a sanction, but as REP. KOTTEL mentioned, it's a matter of due process and they must handle cases one by one.

REP. SIMON said he was interested in the difference between sanctions and overpayment. Mr. Gould said they are two different situations, but thought the section would depend on a case-by-case analysis under due process. An imposition of sanctions would require a showing that it was fraud or abuse under the bill as written, whereas an overpayment would simply require a showing that they were not entitled to the money.

REP. SIMON asked about the term "due process" and asked if that didn't mean due process under law. Mr. Gould said the bill as written would not in any way say the person does not get a hearing. They would get a hearing in all cases, but what this dealt with was the timing of the hearing. Would it be held before the sanctions are imposed or the money recovered, or can the money be recovered and the sanction be imposed and then the hearing in due course will follow.

Vote: Voice vote was taken. The motion failed 13-2 with REPS. MOLNAR and SOFT voting yes.

Motion/Vote: REP. SIMON MOVED A CONCEPTUAL AMENDMENT TO STRIKE "OR IMPOSITION OF SANCTIONS." A roll call vote was taken. The motion carried 11-4 with REPS. GRIMES, CAREY, KOTTEL, and WENNEMAR voting no.

Motion: REP. SOFT MOVED THAT SB 293 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

{Tape: 2; Side: A; Approx. Counter: 618; Comments: n/a.}

EXECUTIVE ACTION ON SB 226

Motion: REP. KOTTEL MOVED THAT SB 226 BE CONCURRED IN.

Discussion:

REP. KOTTEL said they had significant discussion about this bill and during that time with the sponsor's approval, she drafted these amendments. She quickly described the nine amendments for SB 226.

{Tape: 2; Side: B; Approx. Counter: 49; Comments: n/a.}

Vote: The motion carried 14-1 with REP. SUSAN SMITH voting no.

Motion: REP. SIMON MOVED THAT SB 226 BE CONCURRED IN AS AMENDED.

Discussion:

REP. MOLNAR said this is another situation where "one group is trying to say if you meet our criteria, then that's fine, you can carry our card." People who are not licensed counselors now are okay, as far as he's concerned, if they don't portray themselves as such.

REP. KOTTEL said any of the individuals who are volunteer or who work even for pay under a 501(c)3 nonprofit corporation, are exempt from this bill. But she believed there was a problem in terms of ethical violations. People who abuse or take advantage of others that are vulnerable. She said the Department receives numerous calls from people victimized by unlicensed counselors, and because they are unlicensed, there's nothing the Department can do. If they are licensed, they can be dealt with. The bill would not stop anyone from being a therapist, a crystal gazer, or any other type of counseling, such as advice or motivational speaking. It would stop people from referring to themselves as a licensed professional counselor and would limit the type of advice given out, such as for severe mental disorders. She thought it was a good compromise and said all the people who wrote to her originally objecting to the bill, understood and accepted the bill as drafted after talking with her. He urged them to accept the bill as well.

{Tape: 2; Side: B; Approx. Counter: 155; Comments: n/a.}

CHAIRMAN GRIMES asked REP. KOTTEL to describe some of the complaints the Department had received.

REP. KOTTEL said there were several examples where in a therapeutic relationship, a woman is vulnerable and transfers to an unlicensed therapist who has no training, and because of her

HOUSE OF REPRESENTATIVES

Human Services and Aging

ROLL CALL

DATE 3/22/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Duane Grimes, Chairman	✓		
Rep. John Bohlinger, Vice Chairman, Majority			✓
Rep. Carolyn Squires, Vice Chair, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Deb Kottel	✓		
Rep. Bonnie Martinez	✓		
Rep. Brad Molnar	✓		
Rep. Bruce Simon	✓		
Rep. Liz Smith <i>late 3:50</i>	✓		
Rep. Susan Smith	✓		
Rep. Loren Soft	✓		
Rep. Ken Wennemar	✓		



HOUSE STANDING COMMITTEE REPORT

March 23, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 293 (third reading copy -- blue) be concurred in as amended.

Signed: _____

Duane Grimes
Duane Grimes, Chair

And, that such amendments read:

Carried by: Rep. Cobb

1. Page 6, line 27.

Page 7, line 8

Strike: ", incomplete, inaccurate, or misleading"

2. Page 6, lines 28 and 29.

Strike: ", incompleteness, inaccuracy, or misleading nature"

3. Page 7, line 8.

Following: "made"

Insert: ", resulting in a claim for a service or item when the person knew or had reason to know that the person was not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed"

4. Page 7.

Following: line 13

Insert: "(6) The department shall directly or by contract provide a program of instruction and assistance to persons submitting applications, claims, reports, documents, and other information to the department concerning the completion and submission of the application, claim, report, document, or other information in a manner determined necessary by the department. The program must include:

(a) clear directions for the completion of applications, claims, reports, documents, and other

Committee Vote:

Yes 15, No 0.

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information;

(b) examples of properly completed applications, claims, reports, documents, and other information;

(c) a method by which persons submitting applications, claims, reports, documents, and other information may, on a case-by-case basis, receive accurate, complete, specific, and timely advice and directions from the department before the completed applications, claims, reports, documents, and other information must be submitted to the department; and

(d) a method by which persons submitting applications, claims, reports, documents, and other information may challenge the department's interpretation or application of the manner in which the applications, claims, reports, documents, and other information must be completed.

(7) This section applies only for the purpose of civil liability under Title 53 and does not apply in a criminal proceeding."

5. Page 7, line 19.

Strike: ",incomplete, inaccurate,"

6. Page 7, line 20.

Following: "agency"

Insert: "for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed"

7. Page 8, line 14.

Following: "authorization"

Insert: "or advice"

8. Page 24, line 13.

Strike: "or imposition of sanctions"

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 7/22 BILL NO. 913293 NUMBER

MOTION: Simon amendment -
Kottel segregate 1st part -
29302. Fails on a tri

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority		
Rep. Carolyn Squires, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green		✓
Rep. Toni Hagener	✓	
Rep. Deb Kottel	✓	
Rep. Bonnie Martinez		✓
Rep. Brad Molnar		✓
Rep. Bruce Simon	✓	
Rep. Liz Smith		~~✓~~
Rep. Susan Smith		✓
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 3/22/95 BILL NO. SB 293 NUMBER

MOTION: Simon - to strike "or
imposition of sanctions."
carried

NAME	AYE	NO
Rep. Duane Grimes, Chairman		✓
Rep. John Bohlinger, Vice Chairman, Majority		
Rep. Carolyn Squires, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Carey		✓
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Deb Kottel		✓
Rep. Bonnie Martinez	✓	
Rep. Brad Molnar	✓	
Rep. Bruce Simon	✓	
Rep. Liz Smith	✓	
Rep. Susan Smith	✓	
Rep. Loren Soft	✓	
Rep. Ken Wennemar		✓

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DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

EXHIBIT 2

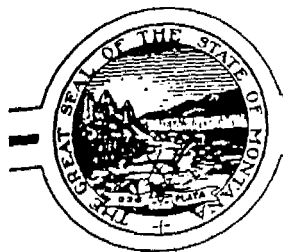
DATE 3/22/95

SB 293

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA



P.O. BOX 4210
HELENA, MONTANA 59604-4210
(406) 444-5622
FAX (406) 444-1970

March 13, 1995

Representative Duane Grimes, Chairman
House Human Services and Aging Committee

Dear Mr. Chairman:

I am writing to address questions raised in the committee hearing on Friday, March 10, 1995 regarding certain aspects of Senate Bill 293, regarding medicaid fraud.

Section 6 of Senate Bill 293 is intended to specify certain fundamental responsibilities of every medicaid provider. We believe that, as a matter of public policy, these responsibilities must be stated to protect the integrity of the medicaid program.

The first key element in this statement of responsibility is the basic principle of honesty. Under subsection (1), providers and persons acting on their behalf would be deemed to represent that the documents and other information submitted to the medicaid program are true, complete, accurate and not misleading, to the best of the person's knowledge and belief. Under subsection (2)(a), providers would have a duty to exercise reasonable care to ensure the truthfulness, completeness and accuracy of documents and information submitted to the medicaid program.

The second key element in this statement is a responsibility to inquire in advance of billing in areas that are reasonably subject to question. The medicaid fiscal agent processes about 250,000 claims each month through an automated claims processing system. In this system, information stated on the claim form is keyed into the system and the system automatically processes the claim. If the claim is facially correct, the provider will receive payment. This allows providers to be paid quickly, rather than waiting for manual claims processing. The system relies heavily upon the honesty and integrity of providers. False or other improper claims may not be discovered until after the provider has received payment. Providers should be held to a duty to inquire before undertaking questionable billing. Subsection (2)(b) would establish a provider duty to exercise reasonable care to ensure that the claims submitted to the medicaid program are claims for which the provider is entitled to be paid.

The third key element in this statement of responsibility is the principle that the provider, who receives the benefit of the medicaid payment, must exercise supervision over and take responsibility for the acts of their employees that bill the medicaid program on the provider's behalf. Without such a responsibility, it is too easy for a provider to accept the benefit of improper or even dishonest billing, but then when confronted with the impropriety or dishonesty, to disclaim knowledge and responsibility. Subsection (3) would prevent a person from disclaiming knowledge if the person knew of the impropriety or, by virtue of their position, authority or responsibility should have known of the impropriety. Subsection (4) would prevent a person from avoiding responsibility if the person's failure to exercise actual authority or responsibility caused the improper conduct to occur.

The primary intended effect of section 6 is to encourage providers to exercise care and to practice honesty in their dealings with the medicaid program. If a provider fails to meet its responsibilities under section 6 and that failure is fraud or abuse as defined in section 1 of the bill, the department could impose civil sanctions under section 15 of the bill. The use of sanctions may be appropriate and necessary in specific cases to address the behavior of problem providers.

Section 6 would not create absolute liability for providers. In a civil sanction case under section 6, the burden would be on the department to show that the provider or person failed to exercise reasonable care, or that the particular circumstances of the individual provider indicate that the provider knew or should have known of certain facts. Providers would have the opportunity to show otherwise. This section is not intended to penalize honest misunderstandings or mistakes, or occurrences beyond the reasonable control of the provider. Further, the section is not intended to make a person responsible solely by virtue of their position.

Concerns have been raised regarding whether section 6 would be used to prosecute providers for acts of their employees even though the provider did not know of or authorize the improper conduct. Section 6, which would be codified in the Title 53 medicaid statutes, is not intended to provide a basis for criminal prosecution. Section 7 establishes a criminal offense for medicaid fraud. Section 7 would be codified in the criminal code, Title 45, which has separate definitions of the applicable mental states, purposely and knowingly. The intent of the bill is that the stricter criminal code mental state requirements would apply in the criminal context. Section 45-2-103, MCA states that a person is not guilty of a criminal offense unless, with respect to each element of the offense, the person acts while having one of the mental states as described in the criminal code. The bill is not intended to hold anyone criminally liable for the criminal acts of another, nor do we believe the bill or other law would permit it.

We look forward to the committee's fair consideration of Senate

EXHIBIT 2
DATE 3-22-95
X SB 293

Bill 293 and a do-pass recommendation.

Sincerely,

Nancy Ellery

Nancy Ellery, Administrator
Medicaid Services Division